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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,266	07/19/2001	Gary D. Jerdec	71163-03	1248
7590	05/06/2004		EXAMINER	
Mark L. Davis P.O. Box 9293 Gray, TN 37615-9293			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/909,266	JERDEE ET AL.
Examiner	Art Unit	
Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 February 2004.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 22-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed February 17, 2004, has been entered. Claim 1 has been amended and claims 27-31 have been cancelled as requested. Thus, the pending claims are 1 and 22-26.
2. Said amendment renders moot the rejections against claims 27-31 as set forth in sections 4, 6, 7, and 9 of the last Office Action. Additionally, the amendment to claim 1 is sufficient to withdraw the 102 rejection of claim 1, 25, and 26 by the Taft reference, as set forth in section 5 of the last Office Action. Specifically, applicant's amendment that the adhesive be "substantially free of polypropylene" is sufficient to overcome Taft's requirement of atactic polypropylene. Additionally, the 103 rejection of claim 24 based upon the primary reference of Taft, as set forth in section 5 of the last Office Action, is hereby withdrawn.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 1 and 22-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

claimed invention. Said claims are rejected as containing new matter for the phrase "wherein the adhesive material is substantially free of polypropylene." Although applicant asserts support for said phrase is found in the specification, the examiner respectfully disagrees. Specifically, a teaching that the copolymers of the present invention are advantageous over polypropylene is in no way support for the negative limitation of "substantially free of polypropylene."

Additionally, the examples disclosed which do not contain polypropylene is not sufficient support for said negative limitation. Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. *Ex parte Grasselli*, 231 USPQ 393. Therefore, claims 1 and 22-26 are rejected as containing new matter.

***Claim Rejections - 35 USC § 102/103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1 and 22 stand rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(c) as being unpatentable over the cited Peoples patent as set forth in section 8 of the last Office Action.

7. Claims 23-26 are rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(c) as being unpatentable over the cited Peoples patent, as applied to claim 1 above.

***Response to Arguments***

8. Applicant's arguments filed with the present amendment have been fully considered but they are not persuasive.

9. Applicant traverses the above Peoples rejection by asserting that the coating of Peoples is not an adhesive material for a carpet backing, but rather a carpet backing itself (Amendment, paragraph spanning pages 5-6). In response, it is reiterated that Peoples' thermoplastic backing layer may be applied directly to a tufted primary backing or may applied over a pre-coat layer (col. 5, lines 12-34). As one skilled in the art readily knows, any material applied to a tufted primary backing or over a pre-coat layer is functioning as a carpet adhesive that binds the carpet tufts and/or binds a secondary backing thereto. Hence, despite Peoples lack of an explicit teaching that the material is an "adhesive" material, the application and utility of the Peoples thermoplastic composition is as a carpet adhesive. Thus, applicant's argument is found unpersuasive and the rejection is maintained.

10. Applicant traversal of the rejection of claims 23-26 without the rejection of claim 1, from which said claims depend, is noted (Amendment, page 5, 2<sup>nd</sup> paragraph). The examiner apologizes for any confusion this error produced. The rejection has been corrected above to state claims 23-26 is a 102/103 rejection, as applied to claim 1 above, rather than the 102 rejection. Because of this error in the last Office Action, the present action is made non-final.

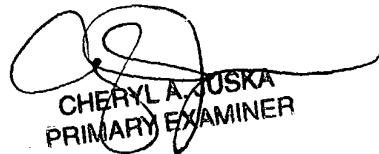
***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIMARY EXAMINER